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IN THE
COURT OF APPEALS OF INDIANA

JOHN TINSMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 18A02-0608-CV-726
	)	
TIMOTHY AND MELODY CREHAN, and	)	
ED AND JANET GUERRA,	)	
	)	
Appellees-Plaintiffs.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey, Judge
Cause No. 18C02-0510-CC-20

MAY 23, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant John Tinsman appeals the trial court's judgment in favor of Plaintiffs/Appellees Timothy Crehan, Melody Crehan, Ed Guerra, and Janet Guerra (collectively, "the Crehans"). We affirm.

ISSUES

Tinsman raises two issues for our review, which we restate as:

I. Whether the trial court committed reversible error when it cancelled and rescinded the contract between the parties.

II. Whether the trial court committed reversible error when it found that improvements made by Tinsman to the property were equal in value to the cash rent collected for 2005.

FACTS AND PROCEDURAL HISTORY

On October 22, 2004, Tinsman entered into a contract whereby he agreed to buy forty-three acres of farmland from the Crehans. As a down payment toward the $100,000 contract price, Tinsman conveyed two vacant lots worth $30,000 to the Crehans. Under the contract, Tinsman was to make a $70,000 balloon payment on May 31, 2005.

Tinsman failed to make the balloon payment or to pay the real estate taxes on the farmland. However, he made improvements to the land by cleaning out a fence row and removing certain willow trees surrounding a pond located in the middle of the forty-three acre plot. Tinsman rented the farmland to a local farmer and collected rent in the amount of $3,440.00 in 2005.

On October 7, 2005, the Crehans filed a complaint for breach of contract and requested that the trial court cancel the contract. Tinsman responded by requesting that the trial court foreclose on the contract. After a hearing, the trial court cancelled and rescinded the contract. In achieving the status quo remedy based upon the cancellation and rescission, the trial court ordered that Tinsman return the forty-three acres to the Crehans and that the Crehans return the two plots transferred to them as a down payment. The trial court also found that the value of the improvements to the farmland was equal to the $3,440.00 collected by the Tinsman in cash rents. The trial court further found that neither the farmland nor the lots appreciated in value during the period between the signing and cancellation of the contract. The trial court further found that Tinsman should pay the 2006 cash rents to the Crehans. Tinsman now appeals.

DISCUSSION AND DECISION

I. PROPRIETY OF CANCELLATION AND RESCISSION

Tinsman contends that the trial court abused its discretion in ordering cancellation and rescission of the contract instead of ordering foreclosure. Tinsman cites *Skendzel v. Marshall*, 261 Ind. 226, 301 N.E.2d 641, 650 (1973), *cert. denied*, 415 U.S. 921, 94 S.Ct. 1421, 39 L.Ed.2d 476 (1974) for the proposition that "judicial foreclosure of a land sale contract is in consonance with the notions of equity developed in American jurisprudence." Appellant's Brief at 5. He reasons that *Skendzel* requires a court to treat the relationship between the parties to a land contract as "a relationship between mortgagor and mortgagee." *Id*. at 8.

In *Skendzel*, our supreme court addressed the issue of whether forfeiture provisions in land contracts are "reasonable" measures of damages. 301 N.E.2d at 645. The court observed that forfeitures are generally disfavored by law because a significant injustice results where the buyer has a substantial interest in the property. *Id*. at 645-46. The court determined that a land sales contract is akin to a mortgage and, therefore, the remedy of foreclosure is more consonant with notions of fairness and justice. *Id*. at 650. However, the court did not hold that foreclosure is the sole remedy:

> [J]udicial foreclosure of a land sale contract is in consonance with the notions of equity developed in American jurisprudence. A forfeiture--like a strict foreclosure at common law--is often offensive to our concepts of justice and inimical to the principles of equity. This is not to suggest that a forfeiture is an inappropriate remedy for the breach of all land contracts. In the case of an abandoning, absconding vendee, forfeiture is a logical and equitable remedy. Forfeiture would also be appropriate where the vendee has paid a minimal amount on the contract at the time of default and seeks to retain possession while the vendor is paying taxes, insurance, and other upkeep in order to preserve the premises. Of course, in this latter situation, the vendee will have acquired very little, if any, equity in the property. However, a court of equity must always approach forfeitures with great caution, being forever aware of the possibility of inequitable dispossession of property and exorbitant monetary loss. We are persuaded that forfeiture may only be appropriate under circumstances in which it is found to be consonant with notions of fairness and justice under the law.

Id.

In the present case, the Crehans are not relying on a forfeiture provision in a land contract. Accordingly, the issue pertaining to the election of forfeiture or foreclosure remedies is not before this court. As the *Skendzel* court clearly held, foreclosure is not

the sole remedy when a buyer breaches the payment provisions of a land contract. Cancellation and rescission of the contract, which is a remedy designed to return the parties to the status quo, work no inequity under the facts of this case, and the trial court did not abuse its discretion in adopting this remedy.

II. PROPRIETY OF DAMAGE AWARD

Tinsman contends that the trial court erred in valuing the improvements made to the farmland. He argues that the only evidence of the improvements' value was his statement that he would have charged $15,000.00 for use of the bulldozer and the labor involved in clearing the land.

When a party has requested specific findings of fact and conclusions of law pursuant to Ind. Trial Rule 52(A), we may affirm the judgment on any legal theory supported by the findings. *Wenzel v. Hopper & Galliher, P.C.*, 779 N.E.2d 30, 36 (Ind. Ct. App. 2002), *trans. denied.* In reviewing the judgment, we first must determine whether the evidence supports the findings and second, whether the findings support the judgment. *Id.* The judgment will be reversed if it is clearly erroneous. *Id.* Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences from the evidence to support them. *Id.* To determine whether the findings or judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom, and we will not reweigh the evidence or assess witness credibility. *Id.* Where, as here, the issue on review relates to the award of damages, the damage award should not be reversed if it is within the scope of the

evidence before the trial court. *Weiss v. Harper*, 803 N.E.2d 201, 205 (Ind. Ct. App. 2003).

In contrast to Tinsman's evaluation, Timothy Crehan testified that he believed Tinman's "improvements" decreased the value of the property. He noted that Tinsman knocked down the trees that formerly provided shade for fisherman. He further noted that all that remained around the pond were piles of dirt. He also noted that the trees had formerly provided shelter from the prying eyes of those using a nearby bypass. Both witnesses offered only their testimony as evidence of the value of the improvements.

It is clear that the trial court did not fully believe either party. The court did not believe that Tinman's work decreased the value of the property; on the other hand, it did not believe that Tinsman provided $15,000.00 worth of improvements. The trial court's damage award was within the scope of the evidence presented by the parties, and we conclude that the court did not abuse its discretion in holding that the cost of the improvements was equal to the rents received.

CONCLUSION

The trial court did not abuse its discretion in determining that cancellation and rescission was a proper remedy. Furthermore, the trial court did not abuse its discretion in determining the value of the improvements to the farmland.

Affirmed.

RILEY, J., and CRONE, J., concur.